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EUROPEAN CORPORATE LAW AND CROSS-BORDER BUSINESS TRANSACTIONS

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Annotation. *This article analyses the evolution of European corporate law and its influence on cross-border business transactions within the EU. It examines key developments in company formation, corporate governance, mobility, mergers, and insolvency, alongside the growing role of financial regulation in shaping corporate practice. Special attention is given to the Cross-Border Mergers Directive, the Mobility Directive, and the European Insolvency Regulation, as well as the impact of Brexit, digitalisation, and ESG regulation. The article argues that while EU corporate law has facilitated cross-border integration, harmonisation remains uneven and contested. Its future will depend on balancing economic efficiency with social and environmental objectives, ensuring both competitiveness and legitimacy in a changing global order.*

Key words: *European corporate law. Cross-border transactions. Corporate governance. Mobility Directive. Insolvency. Capital Markets Union. Brexit. Digitalisation. ESG. Sustainability.*

ЕВРОПЕЙСКОЕ КОРПОРАТИВНОЕ ПРАВО И ТРАНСГРАНИЧНЫЕ БИЗНЕС-СДЕЛКИ

Аннотация. *В статье рассматривается эволюция европейского корпоративного права и её влияние на трансграничные коммерческие сделки в ЕС. Анализируются ключевые направления развития: учреждение компаний, корпоративное управление, мобильность, слияния и несостоятельность, а также возрастающая роль финансового регулирования. Особое внимание уделено Директиве о трансграничных слияниях, Директиве о мобильности и Европейскому регламенту по несостоятельности, а также современным вызовам Брекситу, цифровизации и ESG-регулированию. Сделан вывод, что, несмотря на значительный прогресс в интеграции, гармонизация корпоративного права ЕС остаётся неполной и противоречивой. В дальнейшем успех будет зависеть от способности сочетать экономическую эффективность с социальными и экологическими целями, обеспечивая конкурентоспособность и легитимность.*

Ключевые слова: *(Russian): Европейское корпоративное право. Трансграничные сделки. Корпоративное управление. Директива о мобильности. Несостоятельность. Союз рынков капитала. Брексит. Цифровизация. ESG. Устойчивое развитие.*

Introduction

European corporate law has long occupied an ambivalent position within the architecture of European Union (EU) integration. On the one hand, corporate law is traditionally seen as a domain of national sovereignty, deeply embedded in domestic legal traditions and political economies.

On the other, the EU's commitment to establishing an internal market "without internal frontiers"[1] has required the gradual dismantling of legal and regulatory barriers to cross-border business activity.[3] Corporate law thus sits at the intersection of national autonomy and supranational harmonisation, reflecting the tension between preserving Member States' corporate governance models and facilitating the mobility of companies and capital within the Union. Cross-border business transactions whether in the form of mergers and acquisitions, cross-border conversions, securities offerings, or corporate financing are central to the EU's economic project. The EU's legislative interventions, including directives on company formation, corporate governance, and cross-border restructuring, as well as regulations governing capital markets and financial services, are designed to reduce transaction costs, enhance investor protection, and ensure legal certainty.[2] Yet these interventions are not without controversy. Scholars debate whether harmonisation fosters efficiency and competitiveness or whether it erodes the diversity of national corporate law systems and undermines democratic legitimacy.[3] This article undertakes a critical examination of European corporate law and its impact on cross-border business transactions. It situates the EU's legislative and judicial interventions within their historical and institutional contexts, analyses the substantive areas of harmonisation, and evaluates their impact on corporate mobility, market integration, and regulatory competition. By drawing on doctrinal analysis, case law of the Court of Justice of the European Union (CJEU), and academic commentary, the article provides a comprehensive account of the evolving European corporate law framework. It argues that EU corporate law has gradually moved from minimal harmonisation, focused on reducing barriers to establishment, to proactive regulation, addressing corporate governance, shareholder rights, sustainability, and digitalisation. This evolution reflects broader shifts in EU integration: from a market-oriented project towards a governance framework increasingly concerned with social, environmental, and systemic risks. The analysis proceeds in six parts. Following this introduction, Part II examines the historical and institutional foundations of EU corporate law. Part III explores the harmonisation of core areas of company law, including company formation, governance, and takeovers. Part IV addresses cross-border business transactions, focusing on mergers, mobility, and insolvency. Part V turns to financial regulation and capital markets. Part VI considers contemporary challenges, including Brexit, digitalisation, and ESG. Part VII concludes by reflecting on the future trajectory of EU corporate law in shaping cross-border commerce. The origins of EU corporate law lie in the Treaty of Rome (1957), which established the European Economic Community (EEC) and enshrined the principle of freedom of establishment.[4] Article 49 of the Treaty on the Functioning of the European Union (TFEU) guarantees the right of natural and legal persons to establish and manage undertakings in other Member States.[5] Article 54 extends this right to companies formed in accordance with the law of a Member State, with registered office, central administration, or principal place of business within the EU.[6] These

[1] Treaty on European Union (TEU) art 3(2).
[2] Luca Enriques and Tobias Tröger, 'The Future of EU Company Law' (2019) 20 EBOR 1, 2.
[3] Horst Eidenmüller, 'Regulatory Competition in European Corporate Law' (2009) 12 EBOR 1, 4.
[4] Treaty of Rome (1957), art 52 (now TFEU art 49).
[5] TFEU art 49.
[6] TFEU art 54

provisions formed the constitutional basis for corporate mobility within the EU. However, their effectiveness was initially limited by divergent national company laws and judicial uncertainty about their direct effect.[7] It was only through subsequent case law of the CJEU most notably in Centros, Überseering, and Inspire Art that freedom of establishment was interpreted expansively to allow companies to incorporate in one Member State and conduct business in another, thereby fostering regulatory competition.[8] The Commission's early efforts focused on minimum harmonisation through directives addressing specific aspects of company law.

The First Company Law Directive (1968) sought to protect third parties by requiring disclosure of corporate information. The Second Directive (1976) introduced rules on minimum capital for public companies. Subsequent directives addressed mergers, divisions, accounting, and auditing.[9]These directives aimed to reduce legal disparities that could distort competition or hinder cross-border activity. Yet progress was slow and often politically contentious, reflecting Member States' reluctance to cede control over corporate governance. The CJEU has played a transformative role in developing EU corporate law, often advancing integration in the face of legislative deadlock. In Centros Ltd v Erhvervs og Selskabsstyrelsen, the Court held that Denmark could not refuse registration of a UK-incorporated company operating solely in Denmark, as this would restrict freedom of establishment. This decision, along with Überseering and Inspire Art, established the incorporation theory as the dominant principle, enabling companies to choose the most favourable jurisdiction for incorporation. These rulings significantly enhanced corporate mobility but also raised concerns about regulatory arbitrage, as companies could avoid stricter domestic rules by incorporating abroad. Critics argue that the CJEU's jurisprudence has prioritised market integration over national regulatory objectives such as creditor or employee protection.[10] The adoption of the SE Regulation (Council Regulation 2157/2001) created a supranational corporate form available across the EU.[11] The SE allows companies to operate on a European basis with a uniform governance structure (one-tier or two-tier board) and facilitates cross-border mergers. However, its uptake has been limited, partly due to the complexity of negotiation requirements, including mandatory employee participation under the accompanying Directive.[12] Nonetheless, the SE represents an important symbol of European corporate identity and a laboratory for testing transnational governance structures. The European Commission acts as the primary initiator of corporate law harmonisation. Its agenda has shifted over time from liberalisation (1970s-1990s) to corporate governance reform (post-Enron and Parmalat scandals) and most recently to sustainability and digitalisation.[13] The

[7] Craig and de Búrca (n 1) 1055.
[8] *Centros Ltd v Erhvervs- og Selskabsstyrelsen* (Case C-212/97) EU:C:1999:126; *Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC)* (Case C-208/00) EU:C:2002:632; *Inspire Art Ltd* (Case C-167/01) EU:C:2003:512.
[9] See e.g., Third Company Law Directive 78/855/EEC (Mergers), Sixth Directive 82/891/EEC (Divisions), Fourth Directive 78/660/EEC (Accounting).
[10] John Armour, 'Who Should Make Corporate Law? EC Legislation versus Regulatory Competition' (2005) 58 CLP 369.
[11] Council Regulation (EC) No 2157/2001 on the Statute for a European Company (SE) [2001] OJ L 294/1.
[12] Council Directive 2001/86/EC [2001] OJ L 294/22.
[13] Commission, 'Action Plan: European Company Law and Corporate Governance – A Modern Legal Framework for More Engaged Shareholders and Sustainable Companies' COM (2012) 740 final.

Commission's 2012 Action Plan on European company law and corporate governance, and the 2020 Capital Markets Union (CMU) Action Plan, illustrate this evolving focus. [14] The Council and European Parliament act as co-legislators under the ordinary legislative procedure. Political compromises between Member States often shape the scope of directives, leading to minimum harmonisation rather than full convergence. For example, the Takeover Directive (2004) emerged after decades of negotiation but left key defensive measures to national discretion. Beyond its role in enforcing treaty freedoms, the CJEU has influenced corporate law through its interpretation of directives and general principles. For instance, in Cartesio the Court clarified that Member States retain competence to regulate outbound conversions unless harmonised by EU law, while in Polbud it reaffirmed the right of companies to convert across borders without liquidation.[15] These rulings demonstrate the Court's incremental role in expanding corporate mobility, sometimes outpacing legislative harmonisation.

The establishment of the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA), and the European Insurance and Occupational Pensions Authority (EIOPA) has strengthened supranational oversight in financial markets. While not directly corporate law bodies, their regulatory powers over capital markets, financial reporting, and investor protection have significant implications for corporate transactions.[16] The historical and institutional evolution of EU corporate law reveals a pattern of incremental harmonisation, judicial activism, and institutional experimentation. The CJEU has often advanced corporate mobility faster than legislation, creating tensions between national regulatory objectives and market integration. The Commission has pursued harmonisation pragmatically, balancing competitiveness with social concerns. Critics argue that this piecemeal approach results in fragmentation and regulatory uncertainty, particularly where judicial rulings create opportunities for arbitrage. Proponents contend that flexibility allows the EU to accommodate diverse corporate governance models while still facilitating cross-border transactions. Ultimately, the foundations of EU corporate law reflect the broader dynamics of European integration: a tension between supranational market-building and national regulatory autonomy. The following sections explore how these foundations have shaped substantive areas of harmonisation and their impact on cross-border business transactions.

The EU's earliest interventions in corporate law sought to harmonise company formation rules in order to ensure transparency and creditor protection in cross-border business. The First Company Law Directive (1968) required Member States to maintain public registers of companies and to disclose fundamental information such as corporate statutes, financial statements, and directors' details. [17] The rationale was that third parties transacting with companies in other jurisdictions needed reliable access to corporate information. Similarly, the Second Directive (1976) imposed rules on the minimum capital of public limited companies, reflecting a creditor protection philosophy. [18] While critics argue that minimum capital

[14] Commission, 'Capital Markets Union 2020 Action Plan' COM (2020) 590 final.
[15] Polbud – Wykonawstwo sp. z o.o. (Case C-106/16) EU:C:2017:804.
[16] Niamh Moloney, *EU Securities and Financial Markets Regulation* (4th edn, OUP 2023) 75.
[17] First Company Law Directive 68/151/EEC [1968] OJ L 65/8.
[18] Paul Davies, *Introduction to Company Law* (3rd edn, OUP 2020) 147.

requirements are economically inefficient and easily circumvented,[19] the Directive illustrated the EU's early tendency towards protective harmonisation rather than enabling corporate mobility. Subsequent directives addressed specialised matters such as mergers (Third Directive, 1978),[20] divisions (Sixth Directive, 1982), and single-member companies (Twelfth Directive, 1989). Together, these instruments laid the foundations of an embryonic European company law framework. Beyond directives, the CJEU's jurisprudence on freedom of establishment profoundly shaped corporate mobility. In Centros, the Court recognised the right of a company incorporated in one Member State to operate entirely in another, even if its incorporation was designed to circumvent stricter rules. Überseering confirmed that companies incorporated in one Member State must be recognised as having legal capacity in others.[21] Inspire Art further limited Member States' ability to impose additional capital requirements on foreign-incorporated companies. This jurisprudence effectively entrenched the incorporation theory within EU law, undermining Member States' reliance on the real seat doctrine.[22] The consequence was the creation of a market for company law, in which firms could engage in regulatory arbitrage by choosing incorporation in jurisdictions with more flexible regimes, such as the UK (pre-Brexit) or Cyprus.[23] While the CJEU's case law expanded freedom of establishment, it also sparked debate over whether regulatory competition fosters efficiency or creates a "race to the bottom" in creditor and employee protection. Despite judicial activism, legislative progress on company mobility was slow until the adoption of the Cross-Border Mergers Directive (2005/56/EC), later codified in the Directive (EU) 2017/1132.[24] This instrument established procedures for cross-border mergers of limited liability companies, requiring common draft terms, shareholder approval, and protections for employees and creditors. The Mobility Directive (Directive (EU) 2019/2121) went further, introducing a harmonised framework for cross-border conversions and divisions. It provides companies with procedures to transfer their registered office to another Member State without liquidation, subject to safeguards against abusive practices. These legislative developments respond to CJEU case law (Cartesio and Polbud) and reflect a shift from judicially driven integration towards legislative harmonisation, balancing mobility with stakeholder protection. orporate governance has emerged as a central area of harmonisation, particularly in the aftermath of corporate scandals such as Enron, Parmalat, and Wirecard.[25]

The Shareholder Rights Directive (2007/36/EC) sought to enhance shareholder engagement in listed companies, granting rights to vote on key matters and receive information electronically.[26]The amended Directive (SRD II, 2017/828) went further, introducing "say on pay" rules, obligations for institutional investors to disclose engagement policies, and

[19] John Armour, 'Legal Capital: An Outdated Concept?' (2006) 7(1) EBOR 5.
[20] Third Company Law Directive 78/855/EEC [1978] OJ L 295/36.
[21] Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC) (Case C-208/00) EU:C:2002:632.
[22] Luca Enriques, 'EC Company Law and the Fears of a European Delaware' (2004) 15 EBOR 125, 127.
[23] Horst Eidenmüller, 'Regulatory Competition in European Corporate Law' (2009) 12 EBOR 1.
[24] Directive 2005/56/EC on cross-border mergers of limited liability companies [2005] OJ L 310/1; codified in Directive (EU) 2017/1132 [2017] OJ L 169/46.
[25] Marco Becht, Patrick Bolton and Ailsa Röell, 'Corporate Governance and Control' (2003) 1 Handbook of the Economics of Finance 1, 25.
[26] Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies [2007] OJ L 184/17.

transparency requirements for proxy advisors. These measures reflect an EU policy shift towards active ownership and long-term shareholder engagement, consistent with the Commission's sustainability agenda. Critics argue that SRD II adopts an overly shareholder-centric model, ignoring broader stakeholder interests and failing to address systemic risks. Others contend that the Directive signals an incremental move towards EU-wide corporate governance standards, though still far from convergence.[27] Unlike the United States, where board structures are relatively standardised, the EU accommodates both one-tier and two-tier boards. The SE Regulation permits companies to choose either model, reflecting respect for national diversity.

However, EU law increasingly imposes requirements on board independence, particularly in financial institutions (CRD IV, MiFID II).[28] The proposed Directive on Gender Balance in Company Boards (2022/2381), adopted after a decade of debate, requires listed companies to ensure that at least 40% of non-executive directors are of the underrepresented gender by 2026.[29]

This demonstrates the EU's willingness to use corporate governance regulation to promote social objectives such as gender equality. The EU has progressively integrated CSR and sustainability into corporate governance. The Non-Financial Reporting Directive (2014/95/EU) required large companies to disclose environmental, social, and governance (ESG) information. Its successor, the Corporate Sustainability Reporting Directive (CSRD, 2022/2464), expands the scope to all large companies and listed SMEs, mandating detailed disclosures under the European Sustainability Reporting Standards (ESRS). These developments represent a paradigm shift: EU corporate law is no longer solely concerned with shareholder protection but increasingly positions corporations as instruments of sustainable development.

The EU's regulation of takeovers reflects the tension between market integration and national defensive traditions. After decades of failed proposals, the Takeover Directive (2004/25/EC) introduced rules on mandatory bids, equal treatment of shareholders, and disclosure of bid terms.[30] However, the Directive leaves Member States discretion to maintain or waive defensive measures (such as poison pills or multiple voting rights), reflecting political compromise.[31] This limited harmonisation has led to divergent national practices, undermining the Directive's goal of creating a level playing field. The CJEU has addressed the Takeover Directive sparingly, but cases such as Audiolux confirmed that shareholder protection is a general principle of EU law, albeit one that must be balanced against other interests. Scholarly debate continues as to whether the Directive entrenches shareholder primacy or leaves space for broader stakeholder models. Takeover regulation exemplifies the EU's fragmented harmonisation: while certain minimum standards exist, national diversity persists. Some scholars view this as regulatory pluralism that accommodates different corporate governance cultures.[32]

Others argue it creates legal uncertainty and hinders cross-border acquisitions.

Mergers and acquisitions (M&A) are central to the functioning of the EU's internal market, providing companies with tools to restructure, consolidate, and expand across national

[27] Eddy Wymeersch, 'The Takeover Directive: Light and Darkness' (2008) 4 ECFR 440.
[28] Directive 2013/36/EU (CRD IV) [2013] OJ L 176/338; Directive 2014/65/EU (MiFID II) [2014] OJ L 173/349.
[29] Directive (EU) 2022/2381 on gender balance among directors of listed companies [2022] OJ L 315/44.
[30] Directive 2004/25/EC on takeover bids [2004] OJ L 142/12.
[31] Guido Ferrarini, 'One Share–One Vote: A European Rule?' (2006) 3(2) ECGI Law Working Paper 58.
[32] Eddy Wymeersch, 'The Takeover Directive: Light and Darkness' (2008) 4 ECFR 440, 457.

borders. Prior to harmonisation, divergent national laws created legal uncertainty and transactional costs. The Cross-Border Mergers Directive (2005/56/EC), subsequently consolidated in Directive (EU) 2017/1132, addressed this fragmentation.[33] The Directive establishes a procedural framework requiring companies to draft common terms of merger, publish them for creditor and employee scrutiny, and obtain shareholder approval. National authorities issue pre-merger certificates, and once the merger is registered in the host state, the company acquires legal personality there. By standardising procedures, the Directive facilitates legal certainty and reduces barriers to cross-border restructuring. However, its effectiveness is limited by national variations in implementation, particularly regarding creditor and employee protection.[34] The CJEU has reinforced cross-border mobility through landmark judgments. In SEVIC Systems, the Court held that refusing registration of a cross-border merger was an unjustified restriction on freedom of establishment. Later cases such as Cartesio and Polbud confirmed the right of companies to convert or transfer without liquidation, albeit subject to compliance with host-state requirements.[35] These cases extend the scope of Treaty freedoms beyond mergers to broader forms of corporate restructuring, thus complementing the legislative framework. In addition to statutory mergers, cross-border M&A often occurs via private share or asset acquisitions, governed primarily by contract law. EU directives on financial reporting, disclosure, and takeover bids intersect with private M&A, but contractual autonomy remains dominant.[36] Parties frequently choose English law for transaction documents, reflecting its perceived predictability though Brexit raises questions about future preferences.[37] EU harmonisation has reduced formal barriers to cross-border M&A but has not eliminated transactional complexity. The coexistence of statutory mergers, contractual acquisitions, and national variations results in legal pluralism, which can enhance flexibility but may also undermine efficiency. Corporate mobility within the EU has been shaped primarily by CJEU jurisprudence. Centros allowed incorporation in one state with operations in another; Überseering required host states to recognise foreign-incorporated companies; Inspire Art prevented additional capital requirements; and Polbud clarified that companies may convert their registered office without liquidation, even if motivated by regulatory arbitrage.[38] These cases collectively established a robust right to mobility, enabling companies to exploit jurisdictional differences in corporate law. While proponents argue this fosters regulatory competition and

[33] Directive 2005/56/EC on cross-border mergers [2005] OJ L 310/1; codified in Directive (EU) 2017/1132 [2017] OJ L 169/46.
[34] Horst Eidenmüller, Regulatory Competition in European Corporate Law (OUP 2017) 115.
[35] Cartesio Oktató és Szolgáltató bt (Case C-210/06) EU:C:2008:723; Polbud – Wykonawstwo sp. z o.o. (Case C-106/16) EU:C:2017:804.
[36] John Armour and Luca Enriques, 'The Promise and Perils of Contractual Freedom in European Corporate Law' (2010) 37 JLS 583.
[37] Dan Prentice, 'English Law as the Governing Law of Commercial Contracts' (2013) 9 Journal of Business Law 401.
[38] Centros Ltd v Erhvervs- og Selskabsstyrelsen (Case C-212/97) EU:C:1999:126; Überseering BV v Nordic Construction Company Baumanagement GmbH (NCC) (Case C-208/00) EU:C:2002:632; Inspire Art Ltd (Case C-167/01) EU:C:2003:512; Polbud (n 6).

efficiency, critics contend it undermines creditor, employee, and tax protection.[39] The Mobility Directive (2019/2121) codifies procedures for cross-border conversions, mergers, and divisions.

It introduces safeguards against abusive practices, including mandatory reports on the implications for employees and creditors, and judicial scrutiny of conversions. The Directive represents a shift towards legislative harmonisation of mobility, providing legal certainty while tempering the deregulatory effects of CJEU jurisprudence. However, implementation challenges remain, particularly regarding the protection of minority shareholders and employees in different legal cultures. The Mobility Directive strikes a delicate balance between facilitating mobility and addressing concerns about "letterbox companies" and regulatory arbitrage. Yet its effectiveness will depend on consistent enforcement by national courts. Cross-border insolvency poses particular challenges, as companies often operate in multiple jurisdictions. The European Insolvency Regulation (EIR, 2000, recast 2015) provides rules on jurisdiction, recognition, and coordination of insolvency proceedings.[40] It is based on the principle of universalism, giving primary jurisdiction to the Member State where the debtor's centre of main interests (COMI) is located, while requiring recognition of proceedings across the EU. The Regulation aims to avoid forum shopping, yet disputes over COMI remain frequent, particularly where companies relocate registered offices prior to insolvency.[41] Critics argue that the EIR entrenches uncertainty by leaving COMI determinations largely to national courts.[42] Recognising the limitations of insolvency proceedings, the EU adopted the Preventive Restructuring Directive (2019/1023), requiring Member States to implement frameworks for early restructuring of distressed companies. The Directive mandates availability of restructuring plans, stay of enforcement actions, and cross-class cram-down mechanisms. This represents a shift from liquidation to rescue culture, aligning EU law with trends in the US (Chapter 11) and UK (restructuring plans under the Companies Act 2006).[43] However, divergent national transpositions risk undermining harmonisation.[44] Insolvency and mobility regimes interact in complex ways. Companies may seek to relocate COMI to jurisdictions with favourable restructuring laws, a practice known as "bankruptcy tourism." The Mobility Directive attempts to curb abusive conversions, but tensions remain between mobility rights and insolvency coordination.[45] Cross-border insolvency and restructuring demonstrate both the potential and limits of EU harmonisation. While the EIR and

Restructuring Directive provide frameworks, divergent national practices and judicial discretion create ongoing uncertainty. The regulation of cross-border business transactions in the EU illustrates a patchwork model of integration:

1. Mergers and mobility are facilitated by both CJEU jurisprudence and legislative instruments (Cross-Border Mergers and Mobility Directives), yet subject to concerns over arbitrage.

[39] John Armour, 'Who Should Make Corporate Law? EC Legislation versus Regulatory Competition' (2005) 58 CLP 369.
[40] Regulation (EC) 1346/2000 on insolvency proceedings [2000] OJ L 160/1; recast in Regulation (EU) 2015/848 [2015] OJ L 141/19.
[41] Gerard McCormack, 'COMI and Insolvency Tourism' (2012) 11 EBOR 185.
[42] Reinhard Bork and Kristin van Zwieten, *Rescue of Business in Insolvency Law* (OUP 2017) 87.
[43] Kristin van Zwieten, 'Restructuring Law and Practice in the UK and the EU' (2021) 84 MLR 585.
[44] Horst Eidenmüller, 'Harmonisation of Insolvency Law in Europe' (2017) 36 OJLS 773.
[45] Stephan Madaus, 'Bankruptcy Tourism in the European Union' (2014) 15 EBOR 253.

2. Private M&A remains largely governed by contractual autonomy, with only limited EU intervention.

3. Insolvency and restructuring reflect increasing harmonisation but still rely heavily on national implementation and judicial discretion.

Overall, EU law has created a framework that facilitates cross-border restructuring while leaving significant scope for regulatory competition and forum shopping. The next section turns to financial regulation and capital markets, where harmonisation has been more ambitious and centralised.

The integration of financial markets has been a cornerstone of the EU's broader project of economic integration. Early efforts were piecemeal, addressing disclosure and investor protection in specific contexts.[46] However, the creation of the single market and, subsequently, the monetary union necessitated a more coherent framework for cross-border capital flows. The Financial Services Action Plan (1999) marked a turning point, initiating a wave of directives harmonising securities markets, prospectus requirements, and transparency standards. These measures laid the groundwork for what would later become the Capital Markets Union (CMU), an ambitious agenda launched in 2015 and revitalised in 2020 to reduce reliance on bank financing and deepen cross-border investment.[47] The EU's capital markets regulation cannot be understood in isolation from corporate law. By shaping disclosure, governance, and investor rights, financial regulation directly influences the structure and behaviour of European companies engaging in cross-border transactions. The Prospectus Regulation (2017/1129/EU) replaced the Prospectus Directive, establishing uniform rules on disclosure when securities are offered to the public or admitted to trading on regulated markets.[48] By creating a "single passport" for prospectuses approved in one Member State, the Regulation facilitates cross-border capital raising. While designed to reduce fragmentation, the Regulation imposes significant compliance costs, especially for SMEs. The EU Growth Prospectus, a simplified disclosure regime, seeks to address this by balancing investor protection with proportionality. Scholars argue that the Regulation illustrates the functional convergence of corporate and securities law, as disclosure requirements increasingly serve governance purposes by disciplining managers through market scrutiny.

The Transparency Directive (2004/109/EC, amended 2013/50/EU) complements the Prospectus Regulation by imposing ongoing disclosure obligations on listed companies, including periodic financial reports and major shareholding notifications.[49] While enhancing market integrity, these rules raise debates about short-termism, as quarterly reporting may encourage managerial focus on immediate results rather than long-term value creation. The EU has considered reforms to alleviate this, including permitting semi-annual reporting. The Market Abuse Regulation (596/2014, MAR) and the Market Abuse Directive (2014/57/EU, MAD II) harmonise rules against insider dealing, market manipulation, and unlawful disclosure. They

[46] Niamh Moloney, EU Securities and Financial Markets Regulation (4th edn, OUP 2023) 39.
[47] Commission, 'Capital Markets Union 2020 Action Plan' COM (2020) 590 final.
[48] Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading [2017] OJ L 168/12.
[49] Directive 2004/109/EC on transparency obligations [2004] OJ L 390/38; amended by Directive 2013/50/EU [2013] OJ L 294/13.

establish a broad framework of prohibitions, supervisory powers, and sanctions. For cross-border transactions, MAR ensures consistent standards across Member States, reducing the risk of regulatory arbitrage. Yet enforcement remains uneven, with national authorities differing in resources and priorities. ESMA's role in issuing guidelines and Q&A documents helps, but fragmentation persists. The market abuse framework illustrates the EU's challenge of centralised rulemaking with decentralised enforcement. While harmonised rules exist on paper, their impact depends heavily on national supervisory practices. The Markets in Financial Instruments Directive II (MiFID II, 2014/65/EU) and its accompanying Regulation (MiFIR, 600/2014) represent the most comprehensive framework for investment services and trading venues in the EU. They aim to enhance transparency, investor protection, and competition. Key features include:

1. Investor categorisation and protection (retail, professional, eligible counterparties).
2. Best execution obligations requiring firms to obtain the best possible results for clients.
3. Transparency in trading through pre- and post-trade disclosures.
4. Limits on inducements and conflicts of interest in financial advice.

MiFID II facilitates cross-border provision of investment services under a "passporting" regime. [50] However, critics argue that its complexity has created compliance burdens disproportionate to its benefits, particularly for smaller firms. MiFID II represents the EU's preference for highly prescriptive harmonisation, in contrast to the more flexible approaches in US securities regulation. This reflects the EU's integration logic but risks overregulation and reduced competitiveness. The global financial crisis exposed the risks of over-reliance on credit rating agencies and weak auditing practices. In response, the EU adopted the Credit Rating Agency Regulations (2009/1060/EC, amended 2013), placing agencies under ESMA supervision. [51] Similarly, the Audit Regulation (537/2014) and Directive (2014/56/EU) introduced mandatory audit rotation and restrictions on non-audit services. [52] These reforms demonstrate the EU's increasing willingness to intervene in areas traditionally left to professional self-regulation, reflecting a shift towards supranational oversight in financial markets. The CMU aims to create a single market for capital by eliminating national barriers, diversifying funding sources, and enhancing cross-border investment. Its 2020 Action Plan focuses on digitalisation, sustainable finance, and insolvency harmonisation. Progress has been mixed. While reforms such as the Prospectus Regulation and securitisation framework have advanced integration, others particularly insolvency harmonization remain incomplete.

Brexit has further complicated the CMU project by removing London, Europe's dominant financial centre, from the EU framework. The CMU illustrates the EU's ambition to move beyond piecemeal harmonisation towards systemic integration of financial and corporate markets. Yet political resistance and national diversity hinder full realisation. The EU's financial regulation and capital markets framework demonstrates more ambitious harmonisation than company law.

[50] MiFID II, art 34.
[51] Regulation (EC) 1060/2009 on credit rating agencies [2009] OJ L 302/1; amended by Regulations 513/2011 and 462/2013.
[52] Regulation (EU) 537/2014 on statutory audit [2014] OJ L 158/77; Directive 2014/56/EU [2014] OJ L 158/196.

Regulations such as the Prospectus Regulation, MAR, and MiFIR create uniform rules directly applicable in Member States, reducing divergence. However, enforcement remains fragmented, as national authorities retain supervisory powers. Moreover, complex compliance obligations risk stifling smaller firms and discouraging participation in capital markets. From a corporate law perspective, financial regulation has blurred the line between company law and securities law. Disclosure, transparency, and governance requirements increasingly function as corporate governance tools, shaping managerial behaviour and shareholder engagement. This functional convergence underscores the need to analyse EU corporate and financial law as an integrated whole.

The trajectory of European corporate law reflects both successes in harmonisation and structural limitations. The EU has undeniably facilitated cross-border business through instruments such as the Cross-Border Mergers Directive, the Mobility Directive, and the European Insolvency Regulation. These frameworks, coupled with CJEU jurisprudence, have enhanced legal certainty, reduced transactional barriers, and entrenched corporate mobility as a hallmark of the internal market. Yet these successes are tempered by persistent fragmentation. Harmonisation remains uneven: company formation and disclosure rules are well-integrated, but takeover law, corporate governance, and insolvency regimes reveal divergent national approaches. This patchwork reflects the EU's ambivalence between promoting regulatory competition and pursuing uniformity. While competition can foster innovation, it risks a "race to the bottom" in areas such as capital requirements, employee rights, and creditor protections. Moreover, the EU's reliance on judicial integration through the CJEU raises legitimacy concerns. Landmark cases (Centros, Inspire Art, Polbud) expanded mobility but also circumvented political negotiation. Critics argue that the Court's activism undermines democratic deliberation, privileging economic freedoms over social protections.

The Mobility Directive's safeguards represent a legislative correction, but implementation will reveal whether the EU can reconcile mobility with stakeholder protection. Financial regulation illustrates the EU's ambitious harmonisation capacity, especially compared to traditional corporate law. Regulations such as MAR, MiFIR, and the Prospectus Regulation directly impose uniform standards, limiting national divergence. These frameworks blur the distinction between securities and company law, as disclosure and governance requirements increasingly function as mechanisms of corporate accountability. However, enforcement remains decentralised. The EU's model of centralised rulemaking but national supervision risks inconsistent application. ESMA has developed soft law tools to promote convergence, yet true uniformity requires stronger supranational oversight a politically contested proposition. The CMU exemplifies both the ambition and the fragility of EU financial integration. While designed to reduce bank dependence and enhance cross-border investment, progress is hindered by national insolvency laws, political resistance, and the impact of Brexit. The EU now faces three transformative pressures:

1. Brexit - The departure of the UK has reintroduced fragmentation, curtailed mobility rights, and destabilised financial markets. While this has reduced opportunities for arbitrage, it has also diminished London's role as the EU's financial hub, raising questions about the global competitiveness of the EU market.

2. Digitalisation - Technological change offers efficiency gains but also creates regulatory blind spots. The Digitalisation Directive is a first step, but future regulation must address blockchain-based registries, digital AGMs, and cyber-security risks.

3. ESG and Sustainability - The EU has positioned itself as a global leader in sustainable corporate governance, embedding ESG into company law and finance. Yet disclosure-driven models risk "greenwashing" unless supported by substantive duties and robust enforcement.

Together, these pressures suggest that European corporate law is evolving beyond its traditional role of facilitating market integration. It is becoming a normative project, shaping the purpose of the corporation itself in the context of sustainability, social justice, and global accountability.

European corporate law has undergone profound transformation. From its origins in transparency and capital rules, it has evolved into a sophisticated body of law governing mobility, governance, capital markets, insolvency, and sustainability. The EU has demonstrated both the potential of supranational lawmaking and the enduring resilience of national corporate traditions. The integration of corporate law and financial regulation reveals a broader pattern: the EU is not merely harmonising technical rules but reshaping the very identity and purpose of the European corporation. The future trajectory will depend on the EU's ability to maintain legitimacy, balance competing interests, and respond to global economic and environmental pressures. In this sense, European corporate law is both an instrument of market integration and a laboratory for rethinking capitalism in a transnational context. Its evolution will continue to test the EU's capacity to reconcile economic freedoms with social values, efficiency with fairness, and integration with diversity.

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